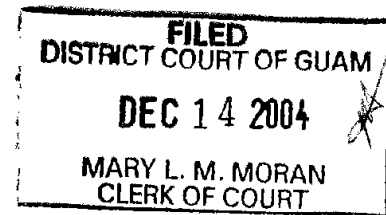


1 ORIGINAL

2 **MANTANONA**  
3 **LAW OFFICE**

4 GCIC Bldg., Suite 601B  
5 414 West Soledad Avenue  
6 Hagatna, Guam 96910  
7 Telephone (671) 472-3666  
8 Facsimile (671) 472-3668



6 Attorney for **Lourdes M. Perez and Artemio B. Ilagan**

7 **IN THE UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF GUAM**

9 JULIE BABAUTA SANTOS, et. al.,

10 Petitioners,

11 vs.

12 FELIX P. CAMACHO, etc., et. al.,

13 Respondents.

Civil Case No. 04-00006

**DEFENDANT'S ILAGAN AND PEREZ**  
**OPPOSITION TO ATTORNEY**  
**GENERAL'S MOTION TO**  
**STRIKE APPEARANCE**  
**AND SUBSEQUENT DOCUMENTS**

14 Defendants Ilagan and Perez hereby submits this Opposition to the Motion by the  
15 Attorney General to Strike the Appearance of Rawlen MT Mantanona ("Motion to Strike")  
16 and all subsequent documents filed by Rawlen MT Mantanona. Based upon the Court's  
17 Order of December 10, 2004, Defendants Ilagan and Perez understand that no Opposition  
18 is required, but wish to place several issues into the record to provide the Court with a  
19 complete record prior to the December 17, 2004 hearing.

20 In addition to providing this brief, Defendants Ilagan and Perez join the arguments  
21 set forth in the Governor of Guam's December 13, 2004 Opposition to the Attorney  
22 General's Motion to Strike, and in the Governor of Guam's November 24, 2004 Opposition  
23 to the Attorney General's Brief.

1                   **A.        Respondents Complied with General Rule 19.1**

2            Although the Attorney General's office has never had any reason to doubt the  
3            desire of Ilagen and Perez to retain separate counsel for the reasons set forth in their  
4            declarations filed in this Court on November 24, 2004, Ilagen and Perez do not wish to  
5            have any procedural objections cloud the substantive issues at stake here. Therefore,  
6            Ilagan and Perez both sent written letters clarifying that they were discharging the  
7            Attorney General's Office in this matter. See Declaration of Rawlen MT Mantanona,  
8            Exhibits "A" and "B". On December 10, 2004, retained counsel also sent a letter to the  
9            Attorney General requesting that the Attorney General execute a substitution of counsel  
10           that had already been executed by Ilagen & Perez. See Declaration of Rawlen MT  
11           Mantanona Exhibit "C", "D" and "E". Retained counsel then had a telephone conversation  
12           with Assistant Attorney General Robert M. Weinberg, who informed retained counsel that  
13           he would not execute the substitution of counsel. Further, on December 13, 2004, the  
14           Attorney General of Guam sent letters to Defendants Ilagan and Perez individually  
15           refusing to withdraw from the representation. See Declaration of Rawlen MT Mantanona,  
16           Exhibit "F" and "G". Thus, Defendants Ilagan and Perez and retained counsel have tried  
17           to comply with GR 19.1(b)(1) (pertaining to substitution of counsel through a substitution  
18           signed by former counsel) but with no avail.

19           For this reason, retained counsel has submitted a written designation of counsel to  
20           the Court pursuant to GR 19.1(b)(2) and has served it upon the Attorney General's office.  
21           See Declaration of Rawlen MT Mantanona Exhibit "H". This Rule permits a designation of  
22           counsel without the signature of former counsel, see GR 19.1(b)(2), and this filing moots  
23           the Attorney General's argument in regard to non-compliance with GR 19.1(b)(1).

1                   **B.      Respondents have complied with procurement law.**

2                   With regard to the issue of Guam Procurement law, Ilagan & Perez refer the  
3 Court to the copy of the Emergency Procurement authorizing their retention of counsel  
4 attached as Exhibit "I" to the Declaration of Rawlen MT Mantanona.

5                   **C.      The Attorney General's concurrent representation**  
6 **of the People of Guam and Ilagan and Perez has created**  
7 **a conflict of interest pursuant to Rule 1.7 of the Guam**  
8 **Rules of Professional Conduct necessitating**  
9 **substitution of counsel.**

10                  The Attorney General of Guam has entered an appearance and has been acting as  
11 counsel for Defendants Ilagan and Perez since the inception of this case. The Attorney  
12 General in this matter is also counsel for the Co-Defendant, the Government of Guam.  
13 The Attorney General also asserts that he represents the People of Guam pursuant to his  
14 statutory and common law powers.

15                  Defendants Ilagan and Perez believe that Attorney General's conclusion as to what  
16 he believes lies in the public interest directly conflicts with their rights, interest and  
17 positions as individual Defendants and as Administrative Officers of the Government.  
18 Further, the Defendants are dissatisfied with the services provided to them.

19                  Conflicts of interest are addressed in Rule 1.7 of the Guam Rules of Professional  
20 Conduct:

21                   **RULE 1.7; CONFLICT OF INTEREST: CURRENT CLIENTS**

22                   (a)   Except as provided in paragraph (b), a lawyer shall  
23 not represent a client if the representation involves a  
24 concurrent conflict of interest. A concurrent conflict of  
25 interest exists if:

                  (1)   the representation of one client will be directly  
                  adverse to another client; or

                  (2)   there is a significant risk that the  
                  representation of one or more clients will be materially  
                  limited by the lawyer's responsibilities to another client, a

1 former client or a third person or by a personal interest of  
2 the lawyer.

3 (b) Notwithstanding the existence of a concurrent  
4 conflict or interest under paragraph (a), a lawyer may  
5 represent a client if:

6 (4) each affected client gives informed consent,  
7 confirmed in writing.

8 Emphasis Added.

9 The Defendants assert that there are huge problems with the concurrent  
10 representation of the People of Guam and Defendants Ilagan and Perez in their official  
11 capacity. First, the Attorney General of Guam in his representation of the People has  
12 already committed himself to the position of supporting the settlement agreement and  
13 administrative plan in the above-entitled case, which he believes to be for the betterment  
14 of the People of Guam.

15 Defendant's Ilagan and Perez disagree with the settlement agreement and  
16 proposed administrative plan, which is in direct conflict with the Attorney General's  
17 established position in his representation of the People of Guam. Defendants Ilagan and  
18 Perez, as parties, believes the settlement is wrong, it was rushed, not well thought out,  
19 and done without study and careful consultation to the Defendants as to the ramifications  
20 to their departments and overall to the Government. Defendants Ilagan and Perez believe  
21 that the settlement agreement and administrative plan in its current form is going to be  
22 disastrous with severe consequences to the Government which far outweigh the benefits.  
23 The Attorney General has not represented their position to the Court. This failure to  
24 represent Defendants Ilagan and Perez continues to date. This difference in position with  
25 the Attorney General constitutes a clear conflict of interest prohibiting joint representation.

Defendants Ilagan and Perez believe their representation and protection is further  
compromised by the concurrent representation because they believe their compliance

1 with the settlement agreement and proposed administration plan would expose them to  
2 criminal liability under 5 GCA §22401. Even the Attorney General in the Troutman opinion  
3 has stated that part of the Defendants' required acts in compliance with the agreement  
4 would violate the law, and expose the defendants to discipline, removal from office, or  
5 even criminal prosecution. But even as to the portions of the agreement the Attorney  
6 General claims are valid, Ilagan and Perez are very concerned because they question the  
7 correctness of this legal opinion and other opinions that require them to authorize the  
8 expenditure of millions of dollars they know does not exist and has not been authorized.  
9 For this reason, they have little faith in the quality of their representation. They believe on  
10 this issue they are not being heard and are being sacrificed by current counsel, in his  
11 supposed representation of the People.

12 The Attorney General may believe that his duties and attorney-client relationship  
13 with state agencies and officers differ from those of the traditional attorney-client  
14 relationship. Defendants Ilagan and Perez respectfully disagrees. Tice v. Dept't of  
15 Transp., 312 S.E.2d 241, 245 (N.C. App. 1984) ("[T]he legislature intended that when the  
16 Attorney General represents a State department...the traditional attorney-client  
17 relationship should exist."); League of United Latin American Citizens, Counsel NO 4434  
18 v. Clements, 999 F.2d 831, 842-843 (5<sup>th</sup> Cir. 1993) (en banc) (similar); Public Utility  
19 Commission of Texas v. Cofer, 754 S.W.2d 121, 125 (Tex. 1988). ("We emphasize that  
20 when a statute confers a right upon the attorney general to represents an agency, it  
21 imposes a corollary duty, and the agency has every right to expect the same diligent and  
22 faithful representation as another 'client.'"); Santa Rita Mining Co. v. Department of  
23 Property Valuation, 530 P.2d 360, 362 (Ariz. 1975) (similar); State ex rel. Howard v.  
24 Oklahoma Corporation Commission, 614 P.2d 45, 50 (Okla. 1980).

1 The Attorney General should terminate the representation. Terminating a  
2 representation is addressed in Guam Rules of Professional Conduct Rule 1.16.

3 **Rule 1.16: DECLINING OR TERMINATING REPRESENTATION**

4 (b) Except as stated in paragraph (c), a lawyer shall not  
5 represent a client or, where representation has commenced,  
6 shall withdraw from the representation of a client if:

7 (1) the representation will result in violation of the  
8 rules of professional conduct or other law;

9 (2) the lawyer's physical or mental condition  
10 materially impairs the lawyer's ability to represent the  
11 client; or

12 (3) the lawyer is discharged.

13 Obvious violations of Rules of Professional Conduct Rule 1.7 (a)(1) and (2) have  
14 occurred because of the present concurrent representation. Further, as stated, Ilagan and  
15 Perez have attempted to discharge the Attorney General in this case by delivery of a  
16 written notification. See Declaration of Rawlen MT Mantanona, attached and incorporated  
17 as Exhibit "A" and "B". The Attorney General's termination of representation is mandated  
18 by Rule 1.16(b)(1).

19 **D. The concurrent representation of the Attorney**  
20 **General with the Government of Guam and the named**  
21 **defendants prevents Defendants Ilagan and Perez from**  
22 **being heard and thereby denies them due process.**

23 The Attorney General's concurrent representation with the People of Guam and  
24 Defendants Ilagan and Perez is denying Defendants Ilagan and Perez an opportunity to  
25 be effectively heard by the Court as named defendants. This denial is clearly a denial of  
due process for Defendants Ilagan and Perez.

Defendants Ilagan and Perez have had minimal contact with the designated  
counsel in this case. Present counsel has never sat down and explained or reviewed the  
case thoroughly with them. The Attorney General appears disinterested in their views,

1 position or thoughts. Defendants Ilagan and Perez do not feel they have been and are  
2 being adequately represented. More importantly, they feel the Court has not heard from  
3 them and that, if current representation continues, the Court will never hear them. The  
4 Court has a right to hear from them as named defendants.

5 Aside from the criminal culpability in this matter, they were never consulted in  
6 regards to the feasibility and ramifications of the settlement agreement on their  
7 departments or on the Government of Guam as a whole. They were never asked by  
8 counsel if they believe or agree with the settlement and proposed administrative plan as  
9 would be asked by any other Defendant. They feel that even though they are defendants,  
10 their opinions and positions do not matter and that the Attorney General's office is  
11 unconcerned about any personal ramifications to them or professional ramifications on the  
12 offices they administer. Defendants Ilagan and Perez believe they are being hung-out to  
13 dry and sacrificed in this matter.

14 More importantly, they believe the doors to the Court to them is closed. The courts  
15 must be open to all. When the Attorney General refuses to fulfill his duty, as required by  
16 law, to provide effective legal assistance to a state officer involved in litigation, such  
17 results would operate to deny due process; State ex rel. Allain v. Mississippi Public  
18 Service Commission, 418 So.2d 779, 784 (Miss. 1982) (similar); Frazier v. State by and  
19 through Pittman, 504 So.2d 675, 692 n.17 (Miss. 1987) (similar); Tice v. Department of  
20 Transportation, 312 S.E.2d 241, 245 (N.C. App. 1984).

21 When confronted with a situation where he disagrees with his client's instructions,  
22 the Attorney General needs to withdraw. See Chun v. Board of Trustees, 952 P.2d 1215,  
23 1239 (Hawaii 1998). ("[T]he Attorney General did not afford the Board of the loyal  
24 representation to which it was statutorily entitled. Indeed the Attorney General



1 acknowledges as much as in Board supplemental answering brief, in which he asserts  
2 'that while the Attorney General represents state officers, her paramount duty is to protect  
3 the interests of the people of the State'. Having perceived herself to be in a conflict of  
4 interest with the Board, the Attorney General was ethically obligated to recommend  
5 retention of other counsel.") Manchin, 296 S.E.2d at 922 (attorney general must withdraw  
6 in favor of appointed counsel if a conflict exists). As one court explained, after an attorney  
7 general begins a representation, it is possible that a department's view might diverge from  
8 the attorney general's, but "[s]uch an eventuality should not give the attorney general the  
9 power to impose his will on the department. [Instead,] [i]t might well provide the basis for  
10 substitution of counsel with a tardy appearance by the attorney general in behalf of what  
11 he perceives to be the state interest." Motor Club of Iowa, 251 N.W.2d at 516; accord  
12 State ex rel. Allain, 418 So.2d at 784. ("The unique position the attorney general requires  
13 that when his views differ from or he finds himself at odds with an agency, then he must  
14 allow the assigned counsel or specifically appointed counsel to represent the agency  
15 unfettered and uninfluenced by the attorney general's personal opinion.")

16 It is clear that Defendants Ilagan and Perez's views differ greatly from those of the  
17 Attorney General's office. They should be permitted to enter their designation of new  
18 counsel to protect their right to due process.



1  
2  
3 **CONCLUSION**

4 The motion to strike is without merit. The Attorney General's opinion and position  
5 will be heard since he is also counsel of record for the Government of Guam in this  
6 matter. Defendants Ilagen and Perez should be permitted to proceed through their  
7 chosen counsel so that they can be heard in this Court.

8 Dated: December 14, 2004

9 MANTANONA LAW OFFICE  
10 Attorney for **Lourdes M. Perez and**  
11 **Artemio B. Ilagan**

12 By: 

13 \_\_\_\_\_  
14 Rawlen M T Mantanona, a duly  
15 licensed employee.

CERTIFICATE OF SERVICE

I, Rawlen M. T. Mantanona, do hereby certify that on the 14<sup>th</sup> day of December, 2004, caused the above Defendants Ilagan and Perez's Opposition to Attorney General's Motion to Strike Appearance and Subsequent Documents to be served upon the counsels of record in this matter by delivering and leaving one (1) copy of same at the following offices, as follows:

Michael Phillips, Esq.  
Phillips & Bordallo, P.C.  
410 West O'Briend Drive  
Hagatna, GU 96910

Shannon Taitano, Esq.  
Office of the Governor of Guam

Douglas Moylan  
Office of the Attorney General  
Suite 2-200E, Guam Judicial Center  
120 West O'Brien Drive  
Hagatna, GU 96910

Rodney Jacob, Esq.  
Calvo & Clark, LLP  
655 S. Marine Corps Drive  
Tamuning, GU 96913

Dated: December 14, 2004

MANTANONA LAW OFFICE  
Attorney for **Lourdes M. Perez and  
Artemio B. Ilagan**

By:



RAWLEN M T MANTANONA  
A duly licensed employee.